



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1254 (03/03/2023)

Topic: Affiliation with a lawyer not admitted in New York

Digest: A New York-admitted lawyer may affiliate and share fees with an out-of-state lawyer residing in New York and practicing immigration law in New York only if (1) neither the lawyers nor their firm would be engaged in the unauthorized practice of law (which is a question that this Committee may not answer), and (2) the lawyers' communications with clients and the public are not misleading.

Rules: 5.5(b), 7.1(a), and 7.5(a)

FACTS:

1. The inquirer, a New York-licensed lawyer living outside New York, concentrates on personal injury matters. The inquirer proposes to affiliate in practice with a lawyer (the Immigration Lawyer) who is admitted only outside New York but who resides in New York and practices immigration law (and only immigration law) from an office located in New York. The inquirer proposes to practice under the law firm name and address of the Immigration Lawyer. The Immigration Lawyer employs a staff to support the immigration practice, and that staff would also assist the inquirer in personal injury matters (although the Immigration Lawyer would not).

QUESTION:

2. May a lawyer admitted in New York affiliate in a law practice with a lawyer who is not admitted in New York but who resides in New York and practices immigration law from an office in New York? If so, may the lawyers practice under the law firm name and address of the New York resident lawyer?

OPINION:

3. In N.Y. State 863 (2011), we stated: "Whether a lawyer who is not admitted to practice law in New York State may engage in a practice within New York State exclusively limited to immigration law is purely a question of law that is not answered by the New York Rules of Professional Conduct and is therefore beyond our jurisdiction." That remains the case, because the unauthorized practice of law (UPL), including by out-of-state lawyers, is governed by law (*see* Judic. Law § 484), and this Committee's mandate is limited to interpreting the New York Rules of Professional Conduct and not other law.

4. The proposed arrangement raises two UPL questions arising from the Immigration Lawyer's activities that we cannot answer, but we consider it important to comment on them in a general fashion.

5. The first UPL question is whether the Immigration Lawyer, who resides and practices in New York but is not admitted to practice in New York, is engaged in the unauthorized practice of law, given that his practice is restricted to immigration law. If the Immigration Lawyer is engaged in the unauthorized practice of law, then the inquirer may not affiliate in a law practice with the Immigration Lawyer, because doing so would impermissibly assist in the Immigration Lawyer's ongoing violation of New York law. *See, e.g.*, N.Y. State 1160 (2019) ("It would not be proper for the inquiring New York attorney to affiliate, and share fees with, a solely out-of-state-licensed attorney, resident in New York" whose work would constitute the unauthorized practice of law); N.Y. 801 (2006) ("Where the legal services performed in New York by an out-of-state attorney would constitute the unauthorized practice of law in New York under DR 3-101(A) [the predecessor to Rule 5.5(a)], it is unethical for a New York attorney to form a partnership with the out-of-state attorney."); *see also* Rule 5.5(b) ("A lawyer shall not aid a nonlawyer in the unauthorized practice of law.").

6. Even assuming the Immigration Lawyer is not currently engaged in the unauthorized practice of law under New York law in his solo practice, one would need to address a second UPL question relating to his proposed affiliation with the inquirer.

7. The second UPL question is whether New York's UPL law would permit the Immigration Lawyer's *law firm* to represent clients not only in federal immigration matters (which is his exclusive area of practice) but also in state law matters, such as personal injury matters (which is the inquirer's area of practice). Even if the Immigration Lawyer does not personally participate in the other legal matters, the UPL laws could conceivably apply, either because the law firm as an entity represents clients in matters for which resident lawyers must have a New York law license or if the Immigration Lawyer would be employing and supervising the nonlawyers in the office assisting inquirer in the prosecution of the personal injury matters.

8. Assuming the inquiring New York lawyer would thereby not be assisting in the unauthorized practice of law (or in any other violation of law), the inquirer may affiliate with the Immigration Lawyer and practice under that lawyer's law firm name, subject to Rule 7.1(a), which forbids a lawyer or law firm from engaging in false or misleading advertising. For example, communications must be clear that the Immigration Lawyer is not admitted to practice law in New York and may perform only the specified legal work in New York that is excepted from the UPL law. In addition, to comply with Rule 7.5(a), the letterhead of the law firm and the lawyers affiliated with it must not mislead clients or the public about the nature and limits of the firm's practice.

CONCLUSION:

9. A New York-admitted lawyer may affiliate and share fees with an out-of-state lawyer residing in New York and practicing immigration law in New York only if (1) neither the lawyers nor their firm would be engaged in the unauthorized practice of law (which is a question that this Committee may not answer), and (2) the lawyers' communications with clients and the public are not misleading.

(17-22)